

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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MINIA MEISELS, on her own behalf and
derivatively on behalf of STAMFORD
EQUITIES, LLC, et al.,

Plaintiff,

ORDER TO SHOW CAUSE
19-CV-4767 (EK) (RML)

-against-

HENRY MEISELS a/k/a HEINICH MORDECHEI
MEISLISH, JACOB MEISELS a/k/a, YAAKOV
MEISLISH, et al.,

Defendants.

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Eric Komitee, United States District Judge:

In filing this action, Plaintiff Minia Meisels invoked the Court's diversity jurisdiction under 28 U.S.C. § 1332. Section 1332(a) (2) provides that diversity jurisdiction extends to suits between "citizens of a State and citizens or subjects of a foreign state."¹ The statute requires "complete diversity between all plaintiffs and all defendants." *Lincoln Prop. Co. v. Roche*, 546 U.S. 81, 89 (2005). As explained below, the Court is not convinced that this requirement has been met.

¹ Although 28 U.S.C. § 1332(a) (3) extends diversity jurisdiction to actions between "citizens of different States and in which citizens or subjects of a foreign state are additional parties," this provision only applies where citizens of foreign states are added to both sides of a litigation that otherwise satisfies the requirements of Section 1332. See *Univ. Licensing Corp. v. Paola del Lungo S.p.A.*, 293 F.3d 579, 580-81 (2d Cir. 2002) (explaining that "diversity is lacking" when "on one side there are citizens and aliens and on the opposite side there are only aliens").

The complaint names three defendants: Henry, Joel, and Jacob Meisels. Minia Meisels (the sole plaintiff) is a citizen of a foreign state, and two of the defendants Henry and Joel – are citizens of New York. The third defendant (Jacob), however, resides in Israel. See Compl. ¶ 17 (“Defendant Jacob Meisels is an individual residing at Penina Street in Jerusalem”); Declaration of Jacob Meisels at ¶ 4, ECF No. 44 (“I reside and teach in Jerusalem. . . .”). This raises the question of whether Jacob (like Minia) is a citizen of a foreign state, which would defeat diversity jurisdiction. See *Univ. Licensing Corp.*, 293 F.3d at 580-81 (“diversity is lacking” when “on one side there are citizens and aliens and on the opposite side there are only aliens”); *Tecon Oil Servs. Ltd v. Bayerische Hypo-Und Vereinsbank*, 492 F. Supp. 2d 398, 399 (S.D.N.Y. June 20, 2007) (dismissing for lack of subject-matter jurisdiction because “sole plaintiff” was an alien and “at least one of the defendants is an alien”).

Federal courts have an obligation to examine their subject-matter jurisdiction *sua sponte*, see *Joseph v. Leavitt*, 465 F.3d 87, 89 (2d Cir. 2006), and may not preside over cases absent subject-matter jurisdiction, see *Lightfoot v. Cendant Mortg. Corp.*, 137 S.Ct. 553, 560 (2017). If the Court lacks subject-matter jurisdiction, it must dismiss the action. See

Fed. R. Civ. P. 12(h)(3); *Arbaugh v. Y & H Corp.*, 546 U.S. 500, 514 (2006).

In this case, diversity jurisdiction would exist only if Jacob was a citizen of the United States (dual or otherwise) who was domiciled here at the time this lawsuit commenced. See *Univ. Licensing Corp.*, 293 F.3d at 581 ("In an action in which jurisdiction is premised on diversity of citizenship, diversity must exist at the time the action is commenced."); *Cresswell v. Sullivan & Cromwell*, 922 F.2d 60, 68 (2d Cir. 1990) ("United States citizens who are domiciled abroad are neither citizens of any state of the United States nor citizens or subjects of a foreign state, and § 1332(a) does not provide that the courts have jurisdiction over a suit to which such persons are parties."); see also *United Torah Educ. & Scholarship Fund, Inc. v. Solomon Capital LLC*, No. 13-CV-3619, 2014 WL 4058486, at *4 (S.D.N.Y. Aug. 14, 2014) (dismissing for lack of diversity jurisdiction because one of several defendants was a U.S. citizen domiciled abroad, even though complete diversity otherwise existed).

As it is Plaintiff's obligation to establish that subject-matter jurisdiction exists over this action, see *Herrick Co., Inc. v. SCS Commc'ns, Inc.*, 251 F.3d 315, 322-323 (2d Cir. 2001), the Court orders her to show cause in writing by March

22, 2021 why this action should not be dismissed in light of the issues described above.

SO ORDERED.

/s Eric Komitee
ERIC KOMITEE
United States District Judge

Dated: March 15, 2020
Brooklyn, New York